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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,177	10/14/2004	George Braoudakis	MID-PT012	1955
3624 7590 11/14/2008 VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER DEMEREE, CHRISTOPHER R	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 11/14/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/511,177

**Applicant(s)**

BRAOUDAKIS, GEORGE

**Examiner**

CHRISTOPHER DEMEREE

**Art Unit**

3782

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-8, 10, 11, 13, 23-29, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-8, 10, 11, 13, 23-29, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/20/2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, 5-8, 10, 13, 23-29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luberto (US 5725146 A) in view of Yocum (US 6027018 A) or Cai (US 6068181 A) or Jensen (US 6041997 A).

Regarding claims 1, 8, 13, 23-25 and 29, Luberto teaches a container and blank for making including: a main panel (12) having a plurality of substantially straight edges about its periphery (14, 16, 18 and 20), each edge extending angularly from each of two adjoining edges (see Fig. 1); a plurality of side walls (32 and 46) depending from at least half of the edges of said main panel, said edges having side walls (see Fig. 4); a base panel (Luberto; 12) and a cover panel (Luberto; 105) one or more of said side

walls having an outer wall panel (41) and an inner wall panel (43), said outer wall panel extending from a proximal fold or score line (14) along a remaining edge and said inner wall panel extending from a distal fold or score line (42) remote from the proximal fold or score line and along an opposed edge of said outer wall panel (see Fig. 4). The combination of the inner and outer side panels form a roll over wall of double thickness. Examiner notes that the top panel defined between lines 92 and 94 (horizontally), and lines 96 and 132 (vertically) is substantially the same shape as the bottom panel. Luberto lacks a removable portion from one of said sidewalls.

Yocum teaches a carton with integral promotional material wherein one or more of the walls further include one or more removable outer portions (138) that reveal promotional information on an inner panel (see Fig. 21).

Cai teaches a French fry carton with hidden indicia wherein outer panel (14) comprises a removable portion (54) that reveals indicia (see Fig. 2).

Jensen teaches a paperboard clamshell construction wherein outer lid panel (40) comprises a removable portion (44) that reveals indicia (see Fig. 2).

It would have been obvious to one skilled in the art at the time of applicant's invention to include such promotional features on the outer wall panel of Luberto's pizza box so that the product would be more attractive to the consumer as taught by Yocum (see Abstract). Examiner considers Yocum's panel 138 to be an outer panel when the carton is in the open configuration as shown in Yocum's Figure 21.

Regarding claims 4 and 26, Luberto, as modified above, teaches a container with double wall thickness (Luberto; inner wall panel 43 and outer wall panel 41) wherein

only one panel has a removable section for a consumer coupon (Yocum; 138), leaving an intact inner wall panel and structurally sound box. It would have been obvious to one skilled in the art at the time of applicant's invention to place said removable coupons on the outer side panel rather than the inner side panel so that the promotional material would be viewable to the consumer (Yocum; Fig. 21).

Regarding claim 5, Luberto, as modified above, teaches a container in which the removable portion (Yocum; 138) or portions are arranged with a perforation line (Yocum; 136) or line of weakness to facilitate removal from the remaining wall portion and inner wall panel and the remaining outer wall portion together with the inner wall panel, which is left intact after removal of the removable portion (as explained in the rejection of claims 1 and 4 above), retain sufficient structural integrity that the container remains stackable (Luberto; Col 4 lines 5-15) and performing its function in retaining the heat and/or freshness of its contents when enclosed therein.

Regarding claims 6 and 27, Luberto, as modified above, teaches a container wherein the removable portion includes a slit, or cut providing a tab (Yocum; 132) to facilitate easy removal of the coupon from the outer wall panel. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to further modify Luberto's container to include a slit providing a tab on the removable coupon portion so that the removal of said coupon is more easily facilitated as taught by Yocum.

Regarding claims 7 and 28, Luberto, as modified above, teaches a container wherein tabs (Luberto; 52 and 54) or the like are provided on the lower surface or edge

of the container (Luberto; see Fig. 2) and serve the added purpose of allowing the assembled container to sit off a surface to allow for the circulation of air.

Regarding claims 10 and 31, Luberto, as modified above, teaches a container wherein the sidewalls are at equal angles to each adjoining sidewall (Luberto; Fig. 2 shows side wall meeting at right angles to one another) and the side walls have substantially parallel edges such that the main panels are close to a substantially parallel spaced apart disposition, there being three side walls which together with the joining panel (Luberto; 76) constitute a four-sided carton forming a square or rectangular prism and the side walls and joining panel have dimensions selected for the packaging of pizza style pies (Luberto; Fig. 1), and may include ventilation holes (Luberto; Col 2 lines 25-27), corner reinforcing tabs (Luberto; 68, 70, 80 and 82), simple single-paneled side walls (Luberto; 60) on the main panel not having the roll-over walls and such like as desired.

4. Claims 11 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luberto in view of Yocum or Cai or Jensen as applied to claims 1 and 23 above, and further in view of Uffmann (US 6153280 A).

Regarding claims 11 and 32, Luberto, as modified above, teaches everything except a removable portion with magnetic material to permit the removable portion to be temporarily attached to a metallic surface. Uffmann, however, teaches a magnetic card with perforations (58) that allow the panel (54) to be attached to a metallic surface via magnet (56). Therefore, it would have been obvious to one skilled in the art at the time of applicant's invention to further modify Luberto's pizza box to include magnetic strips

on the removable coupons so that the coupons could be placed on a refrigerator (Uffmann; Col 1 lines 14-17).

### ***Response to Arguments***

5. Applicant's arguments, see Pages 12-15, filed 10/20/2008, with respect to the rejection(s) of claim(s) 1, 13 and 23 under U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Luberto in view of Yocum or Cai or Jensen.
6. Regarding claim 13, Applicant argues that Luberto fails to teach two main panels that are substantially the same shape. Examiner notes that the top panel defined between lines 92 and 94 (horizontally), and lines 96 and 132 (vertically) is substantially the same shape as the bottom panel
7. Applicant's arguments with respect to claims 1, 4-10 and 23-31 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/  
Examiner, Art Unit 3782

/Gary E. Elkins/  
Primary Examiner, Art Unit 3782